

### **REMARKS/ARGUMENTS**

The present second Reply is being filed on response to the final Official Action of September 29, 2008, and following Applicant's first Reply of October 21, 2008, and Advisory Action of October 29, 2008. In this regard, Applicant's note that instead of acknowledging Applicant's first Reply after final, the Advisory Action references a previous Amendment of July 8, 2008, erroneously referring to its amendments as not being entered after final due to their raising new issues requiring further consideration. These amendments, however, were already entered prior to the aforementioned final Official Action. During a brief telephone conference between Applicant's undersigned attorney and the Examiner on November 3, 2008, the Examiner acknowledged Applicant's first Reply as not including any proposed claim amendments, and asked Applicant to resubmit their Reply and arguments for consideration. Applicant's therefore submit the present second Reply including, in substance, the same remarks presented in Applicant's first Reply.

The final Official Action continues to reject all of the pending claims, namely Claims 1-28, under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Application Publication No. 2005/0038660 to Black et al. As explained below, however, Applicant respectfully submits that the claimed invention is patentably distinct from Black. In view of the remarks presented herein, Applicant respectfully requests reconsideration and allowance of all of the pending claims of the present application. Alternatively, as the remarks presented herein do not raise any new issues or introduce any new matter, Applicant respectfully requests entry of this Reply for purposes of narrowing the issues upon appeal.

#### ***A. Note regarding Claim Construction***

Initially, Applicant notes that in the first and now the final Official Action, the Office has failed to provide Applicant with a sufficient claim construction or interpretation of the cited references so as to enable the Applicant to effectively reply or readily judge the advisability of an appeal. See MPEP §§ 706, 706.07. In this regard, as has been recognized by the Board of Patent Appeals and Interferences (BPAI), "The Examiner must make specific findings as to claim construction." *Ex parte* Blankenstein et al., Appeal No. 2007-2872, Application No. 10/116,312

(BPAI Aug. 26, 2008); and *see* *Gechter v. Davidson*, 116 F.3d 1454 (Fed. Cir. 1997) (emphasis added). In the instant case, other than quoting or paraphrasing Applicant's claim language with annotated citations to figures, or column and line numbers of Black, the Office provides no finding or other explanation regarding Applicant's claims, Black, or the application of Black to Applicant's claims.

In view of the foregoing, should the Examiner continue to reject the claims as being unpatentable over the same or any other grounds, Applicant respectfully requests that the Office submit on the record specific findings as to the construction being applied to the claims, an explanation of the references being cited against the claims, and how those references disclose recited features of the claims.

***B. The Claimed Invention is Patentable over Black***

As explained in response to the non-final Official Action of June 25, 2008, in contrast to independent Claim 1, Black does not teach or suggest sending a processor-generated, coded tone representative of a separate multimedia object, or in turn, decoding the coded tone to identify and present the respective multimedia object. The only audio disclosed by Black that one could argue corresponds to a coded tone is the human speech converted into commands by the disclosed voice recognition system. But even in this instance, Black's human speech is not processor-generated, and Black's commands are not coded tones, similar to independent Claim 1.

In response to the foregoing, the final Official Action explains as follows:

*... Black discloses a multi-media control device fig.3, element 60 and fig.4 element 170, receives speech commands from a user; however, device 60 is the one to generated code tone or decoding tone to identify and present the respective multimedia object.*

Final Official Action of Sep. 29, 2008, page 2. Applicant respectfully disagrees and submits that nowhere does Black disclose a processor-generated coded tone, or its decoding to identify and present a separate multimedia object of which the coded tone is representative, as per independent Claim 1.

As previously explained, Black's media control device 60 includes a controller 190 and a voice recognition system 170, and a number of ports for communicating between various other components of a media presentation system. Black's controller, however, does not generate any coded tone representative of a separate multimedia object, or decode any processor-generated coded tone to identify and present that multimedia object, similar to independent Claim 1. The controller may receive an instruction from the voice recognition system, but nowhere does Black disclose that this instruction is a coded tone representative of a separate multimedia object. Black may also similarly disclose that its voice recognition system receives human speech and converts that speech into the instruction, which is sent to the controller. Again, however, this speech does not correspond to a processor-generated coded tone representative of a separate multimedia object; nor does the instruction generated from that speech.

Applicant therefore respectfully submits that independent Claim 1, and by dependency Claims 2-6 and 25, is patentably distinct from Black. Applicant also respectfully submits that independent Claims 7, 13 and 19 recite subject matter similar to that of independent Claim 1, including sending a communication system-generated audio coded tone over an audio channel, and decoding the coded tone to identify and present a multimedia object represented by the respective tone. As such, Applicant respectfully submits that independent Claims 7, 13 and 19, and by dependency Claims 8-12, 14-18, 20-24 and 26-28, are also patentably distinct from Black, for at least the reasons given above with respect to independent Claim 1.

For at least the foregoing reasons as well as those presented below, Applicant respectfully submits that the rejection of Claims 1-28 as being anticipated by Black is overcome.

***C. Additional Features of Dependent Claims 2-6, 8-12, 14-18 and 20-28***

In addition to the foregoing, Applicant respectfully submits that various ones of dependent Claims 8-12, 14-18, 20-24 and 26-28 recite features further patentably distinct from Black.

***1. Dependent Claims 2, 8, 14 and 20***

Dependent Claims 2, 8, 14 and 20 further recite that the audio (selectively including

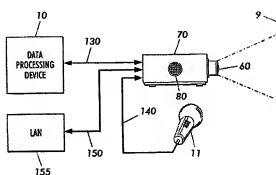
voice communication or coded tone(s)) is sent during an exchange of audio communication, which is also absent from Black. Initially, Applicant notes that an exchange of audio communication as per Claims 2, 8, 14 and 20 requires back-and-forth (i.e., an exchange of) audio communication between two systems or apparatuses. Instead, Black only discloses one-way communication of its audio signals. In this regard, Black does disclose a transfer of human speech from a microphone to a multimedia control device, which may convert the speech to commands and reproduce the speech at an audio system. However, Black does not also disclose any transfer of audio signals from the audio system back to the multimedia control device, or any transfer from the multimedia control device or audio system back to the microphone. In fact, Black does not disclose any communication from the audio system to any other component, or any communication from any component to the microphone.

Relative to the foregoing, the Examiner in the final Official Action states:

*Applicants argue Black does not disclose any transfer audio signals [sic] from the audio system back to the multimedia control device, the Examiner disagrees, Black discloses audio informational data via a bi-directional communication channel (par.24).*

Final Official Action of Sep. 29, 2008, page 2. Applicant respectfully disagrees. At paragraph [0024], referring to FIG. 2 (reproduced below), Black discloses a bi-directional communication channel 130 connecting a data processing device 10 to a media device 70, and indicates that the data processing device 10 may transfer audio informational data to the media device 70. In this manner, one may argue that Black discloses one-way communication of audio informational data from the data processing device to the media device. Black does not, however, disclose any return communication of audio informational data or any other audio from the media device 70 back to the data processing device 10, which along with the aforementioned one-way communication, would be required for an exchange of audio informational data between the data processing device and media device 70, similar to the exchange of audio communication as per Claims 2, 8, 14 and 20. Black may disclose its data processing device 10 receiving electronic commands or signals from the media device, but nowhere does Black disclose that these electronic commands or instructions are audio. Rather, as later disclosed by Black, its voice recognition system (which, presumably, may be co-located with the media device, receives

human speech and converts that speech into instructions.



Black, FIG. 2

## 2. *Dependent Claims 3, 4, 9, 10, 15, 16, 21 and 22*

Dependent Claims 3, 9, 15 and 21, and by further dependency Claims 4, 10, 16 and 22, further recite that the coded audio tone(s) represent multimedia object(s) presented at a system or apparatus with which the presenting apparatus or apparatus in respective independent Claims 1, 7, 13 and 19 exchanges audio communication, which Black fails to teach or suggest. Again, Black does not teach or suggest an exchange of audio communication. Further, Black only discloses one component configured to present multimedia objects, namely a multimedia device. Claims 3, 9, 15 and 21, and by further dependency Claims 4, 10, 16 and 22, recite that not only does the apparatus present a multimedia object, but that during its audio exchange with the apparatus, the apparatus (or its processor) is also configured to present a multimedia object.

## 3. *Dependent Claims 25-28*

Finally, in contrast to dependent Claims 25-28, Black does not teach or suggest an audio sensor enabling detection of whether the audio includes coded tone(s) as the audio is output. For this feature of the claims, the Official Action cites a paragraph (paragraph [0025]) describing the communication channel 130 between Black's multimedia control device and data processing device. Applicant respectfully submits, however, that under no reasonable interpretation

consistent with the specification, or any ordinary and customary meaning, may an audio sensor be considered a communication channel. By their very terms, audio sensors and communication channels perform vastly different functions. That is, an audio sensor such as that of Claims 25-28 senses audio inputs, where as a communication channel such as that disclosed by Black merely passes data between two components.

In response to the foregoing, the Examiner in the final Official Action states:

*Applicants argue in paragraph 025, audio sensor and a communication channel is not the same, the Examiner agrees, the audio sensor and a communication channel are different ports provided by the media device.*

Final Official Action of Sep. 29, 2008, page 2. Applicants note, however, that nowhere does paragraph [0025] of Black mention anything regarding any port of any media device. At various points, Black does disclose various components including ports, but under no reasonable interpretation consistent with the specification, or any ordinary and customary meaning, may an audio sensor be considered a port. Similar to before, by their very terms, audio sensors and ports perform vastly different functions. That is, an audio sensor such as that of Claims 25-28 senses audio inputs, where as a port such as that disclosed by Black are interfaces for connecting various components and transferring data between those components. And in no regard does Black teach or suggest an audio sensor enabling detection of audio including a coded tone as that apparatus outputs the audio, similar to the audio sensor of Claims 25-28.

**CONCLUSION**

In view of the remarks presented herein, Applicant respectfully submits that the present application is in condition for allowance. As such, the issuance of a Notice of Allowance is therefore respectfully requested. In order to expedite the examination of the present application, the Examiner is encouraged to contact Applicant's undersigned attorney in order to resolve any remaining issues. As explained above, no new matter or issues are raised by this Reply, and as such, Applicant alternatively respectfully requests entry of this Reply for purposes of narrowing the issues upon appeal.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



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